

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

EX PARTE CLIFFORD LEE HANNEL ET AL.

U.S. PATENT APPLICATION NUMBER 10/019,101

FILING DATE: DECEMBER 20, 2001

BRIEF ON APPEAL

CARR & FERRELL *LLP*
2200 GENG ROAD
PALO ALTO, CA 94303
T: 650.812.3400
F: 650.812.3444

ATTORNEY FOR THE APPELLANTS
AND REAL-PARTY-IN-INTEREST

TABLE OF CONTENTS

REAL-PARTY-IN-INTEREST	3
RELATED APPEALS AND INTERFERENCES	5
STATUS OF THE CLAIMS	5
STATUS OF AMENDMENTS	5
SUMMARY OF THE CLAIMED SUBJECT MATTER	8
GROUND OF REJECTION TO BE REVIEWED ON APPEAL	11
ARGUMENT	12
CONCLUSION AND REQUESTED RELIEF	17
CLAIMS APPENDIX	18
EVIDENCE APPENDIX	21
RELATED PROCEEDINGS APPENDIX	22

REAL-PARTY-IN-INTEREST
(37 C.F.R. § 41.37(c)(1)(i))

The Appellants in the present appeal are Clifford Lee Hannel and Anthony May—the jointly named inventors of U.S. patent application 10/019,101 (the ‘101 Application). The **real-party-in-interest** and assignee of record is **SonicWALL, Inc. of Sunnyvale, California**. SonicWALL, Inc. is a recognized leader in comprehensive information security solutions, which integrate dynamically intelligent services, software and hardware that engineer the risk, cost and complexity out of running a high performance business network.

An assignment by and between the Appellants and Internet Dynamics, Inc. is recorded at Reel 022152 and Frame 0019. An assignment by and between Internet Dynamics, Inc. and Redleaf Group, Inc. is recorded at Reel 017050 and Frame 0089. Redleaf Group, Inc. subsequently assigned a divided interest in the ‘101 Application to SonicWALL, Inc. The assignment for that transaction is recorded at Reel 017050 and Frame 0111.

The remainder of the right, title, and interest in the ‘101 Application was assigned to Marshman Research LLC. A first assignment for this transaction was recorded at Reel 016722 and Frame 0438 albeit incorrectly identifying the assignor as Redleaf Group, Inc. A second assignment for that same transaction was recorded at Reel 017050 and Frame 0366; this second assignment correctly identifies the assignor as Redleaf Group, Inc. Notwithstanding the error in the abstract of title for this first assignment, title was legally transferred from Marshman Research LLC by Redleaf Group, Inc.

Marshman Research LLC assigned its ownership interest in the '101 Application to Kendall Holdings LLC in an assignment recorded at Reel 017050 and Frame 0368. Kendall Holdings LLC then assigned its ownership interest in the '101 Application to SonicWALL, Inc. This final assignment is recorded at Reel 017050 and Frame 0434. By virtue of the final assignment by and between Kendall Holdings LLC and SonicWALL, Inc., the formerly divided interest in the '101 Application was reunited in its entirety. SonicWALL, Inc. is, therefore, the owner of the entire right, title, and interest in the '101 Application.

RELATED APPEALS AND INTERFERENCES
(37 C.F.R. § 41.37(c)(1)(ii))

The present application is, *inter alia*, a continuation-in-part of U.S. patent application number 09/720,277, which is now U.S. patent number 7,272,625. U.S. patent application 09/720,277 is, *inter alia*, a continuation-in-part of U.S. patent application 09/034,507, which is now U.S. patent number 6,408,336. U.S. patent application number 11/927,214 is a continuation of the present application. To the knowledge of the undersigned, none of the aforementioned patents and/or applications is involved in any proceeding before the Board of Patent Appeals and Interferences.

STATUS OF THE CLAIMS
(37 C.F.R. § 41.37(c)(1)(iii))

Claims 1-3 and 5-10 are presented for appeal. All of the aforementioned claims have been at least twice rejected. No claims have been allowed or are otherwise objected to by the Examiner.

STATUS OF AMENDMENTS
(37 C.F.R. § 41.37(c)(1)(iv))

The '101 Application was filed on December 20, 2001. The filed application included 14 total claims. In response to a first and non-final office action dated March 4, 2004 (*Office Action I*), the Applicants amended claim 1 on September 7, 2004 (*Response A(1)*). Claim 1 was again "amended" in filing dated June 16, 2005 (*Response A(2)*). This second amendment was necessitated by the objection dated May 20, 2005 (*Objection*), which indicated that claim 1 had (in the September 7, 2004 response) been incorrectly annotated. No further objection to the September 7, 2004 or June 16, 2005 amendment was received. As such the Appellants presume that the aforementioned amendment was entered.

A further action of substance issued on September 2, 2005; a final rejection (*Office Action II*). This amendment considered the claims as amended on June 16, 2005 further confirming entry of the aforementioned amendment. A response filed March 3, 2006 amended claims 1-14 (*Response B*). This amendment was accompanied by a Request for Continued Examination under 37 C.F.R. § 1.114. The Request for Continued Examination procedurally removed the finality of the rejection thereby allowing for entry of the corresponding claim amendments.

A new non-final rejection was mailed March 31, 2006 (*Office Action III*), which considered the claims as amended March 3, 2006. A responsive amendment dated July 5, 2006 (*Response C*) amended claims 1, 4, 5, and 11-14. Entry of these claims should have occurred as a matter of right due to the non-finality of the prior rejection. The Examiner issued a final rejection on August 28, 2006 (*Office Action IV*), which took into consideration the July 5, 2006 amendments. A further amendment to claims 1-14 was filed October 25, 2006 (*Response D*). These amendments, however, were not entered per the advisory action dated September 15, 2006 (*Advisory Action*). The Appellants submitted a Request for Continued Examination December 4, 2006. The Request for Continued Examination procedurally removed the finality of the rejection and allowed for entry of the previously submitted amendments to the claims.

A new non-final rejection was issued on January 5, 2007 (*Office Action V*) and that took into consideration the claim amendments dated July 5, 2006. An amendment filed July 5, 2007 (*Response E*) amended claim 1. A final rejection followed on August 3, 2007 (*Office Action VI*). A response dated October 31, 2007, (*Response F*) submitted arguments but made no further amendments to the claims. A Request for Continued Examination—the third such request—accompanied those remarks.

On January 22, 2008, a new non-final office action was issued (*Office Action VII*). A response was filed on July 22, 2008 (*Response G*). The July 22 response amended claims 1, 2, 5, and 7-10; claims 4 and 11-14 were cancelled. A final rejection was issued on September 15, 2008 (*Office Action VIII*). A Notice of Appeal was lodged September 24, 2008.

All claim amendments are believed to have been previously entered and thus reflected in the claim appendix, which is included with the present brief. Those claims—1-3 and 5-10—are presented for appeal.

SUMMARY OF THE CLAIMED SUBJECT MATTER
(37 C.F.R. § 41.37(c)(1)(v))¹

Independent claim 1 as presented for appeal recites:

An apparatus for providing information in response to a query of a virtual database table, the apparatus comprising:

a virtual database service comprising the virtual database table, wherein the virtual database table comprises one or more rows and each of the one or more rows comprises one or more fields;

an information source comprising the information to be provided in response to the query of the virtual database table, wherein the information source comprises an access evaluator configured to determine whether a user may have access to an information resource within the information source, the query comprising a field name and an indication of manner for selecting a row, the manner of selecting a row including information identifying the information resource within the information source and the user seeking access to the information resource, the information provided in response to the query including an indication of whether the identified user may access the information resource, the virtual database service configured to:

receive the query;

respond to the field name and the indication of the manner for selecting a row as required to obtain the information to be provided from the information source; and

provide the information as a value of the field indicated by the field name in the selected row, in response to the query; and

an additional information source configured for use as a user profile information source that provides additional information about the user through the use of profile information gathering that indicates to the user profile information source how to gather the profile information, the indication of the manner for selecting a row further including the profile information gathering information, wherein the information provided in response to the query is obtained at least in part from the profile information source, the provided information including the profile information.

See *infra CLAIMS APPENDIX*, 18.

¹ All references to the *SPECIFICATION* are exemplary and are not intended to be limiting. The present references are made solely to satisfy the requirements of 37 C.F.R. § 41.37(c)(1)(v). No reference is intended—nor should it be construed—as an admission or denial as to any requirement for patentability, including but not limited to those requirements set forth in 35 U.S.C. § 112, ¶ 1 as they pertain to written description and enablement.

The specification references apparatus in stating:

Once internal networks begin using Internet addressing and Internet protocols and are connected into virtual private networks, the browsers that have been developed for the Internet can be used as well in the internal networks 103, and from the point of view of the user, there is no difference between accessing data in Internet and accessing it in internal network 103. Internal network 103 has thus become an intranet, that is, an internal network that has the same user interface as Internet 111.

Specification, 7:12-17. The *Summary of the Invention* states that “[t]he invention attains . . . an interface to the policy-enabled component [of a generalized policy server] which presents the access control system as a virtual relational database table.” *Specification*, 10:3-5. Figure 41 of the present application is, in fact, “a schema for a query interface to the generalized policy server.” *Specification*, 12:26.

Per the *Summary of the Invention*, aforementioned apparatus “presents the access control system as a virtual relational database table in which there is a row for every user-information source combination.” *Specification*, 10:4-6. “[T]he policy-enabled component addresses a query indicating the user and the information source to the table.” *Specification*, 10:6-8.

The specification as it relates to FIGURE 29 discloses a “policy query 2939 com[ing] from policy server 2617 . . . and includ[ing] a specifier of the action to be performed as well as a specification of the information source or other resource upon which the action is to be performed.” *Specification*, 88:17-19. A further detail discussion of the information sources claimed in the present application appears in the context of a virtual database service responding to a query as is apropos with regard to claim 1. Specifically, the specification states:

VDB service 3813 is able to respond to query 5403 even though table 5411 does not exist because it is able to use the information in the query's WHERE clause to locate and retrieve the results specified in the SELECT clause in one or more information sources 5409. Having retrieved the results, VDB service 3813 builds a constructed row 5417 corresponding to virtual row 5413 (i) selected by the query. Constructed row 5417 includes at least actual fields 5419 for the results that are to be returned for the query. Constructed rows 5417 are built for each query, and only as many are built for each query as are needed for the rows of the virtual table specified by the query. Information sources 5409 may include information sources local to VDB service 3813 or non-local information sources, and may even include other databases.

Specification, 99:13-21.

As stated in the *Summary of the Invention*, "[a] virtual database service in the improved generalized policy server assembles the information needed for the query result using data sources that are accessible to it. In a preferred embodiment, the query is written in the well-known SQL language and the virtual database service emulates standard remotely-accessible database systems." *Specification, 10:11-15.* This summary corresponds to the detailed description that notes

VDB service 3813 emulates a relational database protocol, the information which is being queried appears to be organized into a table which has a row for each potential user/potential resource combination for the resources controlled by policy-enabled component 2609 and columns that define fields in the rows. Each field in a row contains the row's value for the column to which the field belongs.

Specification, 97:30-98:1. The detailed description continues:

VDB service 3813 is termed a virtual database service because the queries are made on a virtual relational table instead of a real one. The reason for this is that the queries dealt with by VDB service 3813 are made to find out whether the access policies in policy database 3825 will permit a user who is requesting access to an information resource to have access to the information resource. A real relational database table for such

* * *

queries would have to have a row in the table for each <potential user, information resource> pair, since any of the potential users may request access. In most applications the real relational database table would not only be unacceptably large, it would be undefinable, since there would be no way of knowing who all the potential users were.

Specification, 98:23-31.

“A real relational database table for such queries would have to have a row in the table for each <potential user, information resource> pair, since any of the potential users may request access.” *Specification*, 98:27-29. “In most applications the real relational database table would not only be unacceptably large, it would be undefinable, since there would be no way of knowing who all the potential users were.” *Specification*, 98:29-31.

**GROUND OF REJECTION TO BE REVIEWED ON APPEAL
(37 C.F.R. § 41.37(C)(1)(vi))**

- I. Would One of Ordinary Skill in the Art Combine U.S. Patent Numbers 5,634,053 to Noble et al., 7,213,262 to Elley et al., and 5,115,501 to Kerr as Posited by the Examiner under 35 U.S.C. § 103(a)?
- II. Has the Examiner Misapplied the Supreme Court’s Holding in *KSR International* and the Board of Patent Appeals and Interferences Holding in *Ex Parte Smith*?

ARGUMENT
(37 C.F.R. § 41.37(c)(1)(vii))

ONE OF ORDINARY SKILL IN THE ART WOULD NOT MAKE THE COMBINATION OF U.S. PATENT NUMBERS 5,634,053 TO NOBLE ET AL., 7213,262 TO ELLEY ET AL., AND 5,115,501 TO KERR AS POSITED BY THE EXAMINER UNDER 35 U.S.C. § 103(A)

The Examiner contends that the combination of Noble et al., Elley et al., and Kerr discloses the subject matter of what was previously pending claims 1, 4, and 14. See *Office Action VII*, 3-5 and 9-10. The subject matter of those claims has since been incorporated into independent claim 1. See *Response G*, 5. The Appellants contend that one skilled in the art would not have been motivated to make the Examiner's proposed combination, especially with respect to the Kerr reference.

Kerr concerns a purported "application program [that] automatically creates and presents a customized user interface." *Kerr*, Abstract. Kerr purports to create and present this interface by "determining a set of operations which is appropriate for the current user based on various relevant characteristics of the user." *Id.* As a result, "[t]he application program presents only the specified operations in the menus, icons, application bars or other interface components of the application program."

As an initial matter, the Appellants contend that one skilled in the art would not seek to combine the teachings of user interface creation and generation (Kerr) in the context of the credential and membership disclosure of Elley et al., and the smart dictionaries, data information managers, and local information managers referenced in Noble et al. There simply is no reason to make this combination; the Examiner's rejection (as discussed below) also fails to provide such a motivation. The Appellants further question whether one would make the aforementioned use of the UI teachings of Kerr in an effort to arrive at the presently claimed 'apparatus for providing information in response to a query of a virtual database table' as set forth in claim 1.

When applying 35 U.S.C. 103(a), the following tenets of patent law must be adhered to: (A) The claimed invention must be **considered as a whole**; (B) The **references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination**; (C) The references must be viewed without the benefit of **impermissible hindsight** vision afforded by the claimed invention; and (D) Reasonable expectation of success is the standard with which obviousness is determined. See *Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986). The Appellants respectfully suggest that the references and the presently claimed invention have not been considered as a whole, especially in light of the aforementioned combination of references. In that regard, the Appellants respectfully contend that a *prima facie* case of obviousness has not been made and that the rejection is overcome.

Notwithstanding, the Examiner contends that “[i]t would have been obvious to one of ordinary skill in the art . . . to modify the above combination” to include “an additional information source that is a user profile information source,” wherein “the manner of selecting [a] row includes profile gathering information,” and “the provided information is obtained at least in part from the profile information source.” *Office Action VII*, 9-10; see also *Office Action VIII*, 4-5. The Examiner’s motivation, however, is nothing more than a summary of the claimed subject matter of former dependent claim 14 (now a part of independent claim 1). The Appellants challenge the purported motivation to combine in that the Examiner has failed to identify any teaching in any reference or any evidence that is actually known or would be known to one of ordinary skill in the art as to why one would make the purported combination as presented by the Examiner.

As an initial matter, the Appellants appreciate that “[t]he rationale to modify or combine the prior art does not have to be expressly stated in the prior art” and that “the rationale . . . may be reasoned from knowledge generally available to one of ordinary skill in the art.” *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). That said, a mere conclusory statement that modifications of the prior art to meet the claimed invention would have been well

within the ordinary skill of the art “because the references relied upon teach that all aspects of the claimed invention were individually known in the art is **not sufficient** to establish a *prima facie* case of obviousness without some **objective reason to combine** the teachings of the references.” *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993) (emphasis added). The Supreme Court re-affirmed the same in *KSR International Co. v. Teleflex Inc.* wherein the court found that “rejections on obviousness cannot be sustained by **mere conclusory statements**; instead, there must be some **articulated reasoning** with some **rational underpinning** to support the legal conclusion of obviousness.” 550 USPQ2d 1385, 1396 (2007) (emphasis added); see also *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Absent such objective articulated reasoning and some rational underpinning related to the same, the Appellants contend that a *prima facie* case of obviousness has not been and that the Examiner’s rejection is overcome.

THE EXAMINER HAS MISAPPLIED THE SUPREME COURT’S HOLDING IN KSR INTERNATIONAL AND THE BOARD OF PATENT APPEALS AND INTERFERENCES HOLDING IN EX PARTE SMITH.

The Examiner—in the final rejection in the prosecution of the ‘101 Application—countered the Appellants’ arguments concerning a lack of motivation to combine with the following:

If [the] applicant argues that there is no specific suggestion or teaching in the references to combine prior art, the examiner may respond that KSR forecloses the argument that a specific teaching, suggestion or motivation is required to support a finding of obviousness.

Office Action VIII, 9 (citing *Ex Parte Smith*, slip. op. 20).

The Examiner overextends the Supreme Court’s holding in *KSR* as well as that of the Board in *Ex Parte Smith*. *KSR* does not suddenly create a ‘get out of jail free’ card whereby an Examiner may counter any argument concerning motivation to combine with a conclusory response that ‘*KSR* forecloses the need for any specific teaching,

suggestion, or motivation.’ The current version of the Manual of Patent Examining Procedure (MPEP), which takes into account the Supreme Court’s holding in *KSR*, indicates the same as it states:

Obviousness can be established by combining or modifying the teachings of the prior art to produce the claimed invention **where there is some teaching, suggestion, or motivation to do so.** *In re Kahn*, 441 F.3d 977, 986, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006).

MPEP § 2143.01(I) (emphasis added).

The MPEP continues—and directly references *KSR*—in noting that:

The mere fact that references **can** be combined or modified does not render the resultant combination obvious **unless the results would have been predictable to one of ordinary skill in the art.** *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1396 (2007).

MPEP § 2143.01(III) (emphasis added).

The Supreme Court, in its *KSR* decision, specifically stated that “[h]elpful insights [like TSM] . . . need not become rigid and mandatory formulas” for when such rigid application occurs, “the TSM test is incompatible with our precedents.” *KSR*, slip. op. 15. The Appellants are mindful of the Court’s holding in *KSR*. In light of the same, the Appellants are not suggesting—nor have they ever intended to—that a strict application of the teaching, suggestion, motivation test must be applied in order to support a *prima facie* case of obviousness. Such a request would be improper under *KSR* as well as *Ex Parte Smith* where the Board—correctly—found that “*KSR* forecloses Appellant’s argument that **a specific teaching** is required for a finding of obviousness.” *Ex Parte Smith*, Slip. Op. 20 (citing *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396). This does not mean, however, that the Examiner is freed from the obligation to evidence **some** motivation to combine in order to establish a *prima facie* case of obviousness.

Notwithstanding the misinterpretation of *Ex Parte Smith*, the Board's decision is illustrative of an Examiner's ongoing obligation to evidence motivation to combine. The Board—in affirming a finding of obviousness in the context of *KSR*—found that “[a] person of ordinary skill is also a person of ordinary creativity, not an automaton.” *Ex Parte Smith*, slip. op. 20, (quoting *KSR*, 127 S.Ct. at 1742). “It would,” found the Board, “take no more than ordinary creativity for a person of ordinary skill to [arrive at the claimed invention at issue in *Ex Parte Smith*].” *Ex Parte Smith*, slip op. 20. *Ex Parte Smith* was not about foreclosure of any counter to obviousness, but rather reaffirmed that an argument advanced by the Examiner regarding some motivation to combine must occur in the context of a properly founded rejection.

For example, *Ex Parte Smith* stated that the Examiner's combination was proper because “[c]ommon sense teaches . . . that familiar items may have obvious uses beyond their primary purposes, and in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle.” *Ex Parte Smith*, Slip Op. 20 (quoting *KSR*, 127 S.Ct. at 1742, 82 USPQ2d at 1397). The Examiner's rejection in the present appeal, however, does not even provide this limited context as to why a motivation to combine exists, but rather based on impermissible hindsight. The Examiner's argument is, at best, circular in that it contends it would be obvious to utilize the Kerr reference because the Kerr reference purportedly discloses that which is claimed by the Appellants.

KSR requires that an obviousness rejection set forth more than mere conclusory statements. See *KSR*, 550 USPQ 2d 1385. “[T]here must be some **articulated reasoning** with some **rational underpinning** to support the legal conclusion of obviousness.” *Id.* (emphasis added). A *prima facie* case of obviousness cannot survive absent “some objective reason to combine the teachings of the references.” *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993) (emphasis added).

CONCLUSION AND REQUESTED RELIEF

The Examiner has failed to make a *prima facie* case of obviousness with respect to the proffered combination of references. The Examiner, in countering the Appellants' arguments, misconstrues the holdings of *KSR* and *Ex Parte Smith*, which only further evidences the impropriety of the Examiner's rejection. In that regard, the Examiner's 35 U.S.C. § 103(a) rejection of claim 1 is overcome. Any claim dependent from claim 1 is allowable for at least the same reasons with respect to 35 U.S.C. § 112, ¶ 4.

The Board is respectfully requested to overturn the Examiner's rejection with instructions to remand and allow the '101 Application.

Respectfully submitted,
Clifford Hannel et al.

March 24, 2009

By: /Tam Thanh Pham/
Tam Thanh Pham (Reg. No. 50,565)
CARR & FERRELL LLP
2200 Geng Road
Palo Alto, CA 94303
T: 650.812.3400
F: 650.812.3444

ATTORNEY FOR THE APPELLANTS
AND REAL-PARTY-IN-INTEREST

CLAIMS APPENDIX
(37 C.F.R. § 41.37(c)(1)(viii))

1. An apparatus for providing information in response to a query of a virtual database table, the apparatus comprising:

a virtual database service comprising the virtual database table, wherein the virtual database table comprises one or more rows and each of the one or more rows comprises one or more fields;

an information source comprising the information to be provided in response to the query of the virtual database table, wherein the information source comprises an access evaluator configured to determine whether a user may have access to an information resource within the information source, the query comprising a field name and an indication of manner for selecting a row, the manner of selecting a row including information identifying the information resource within the information source and the user seeking access to the information resource, the information provided in response to the query including an indication of whether the identified user may access the information resource, the virtual database service configured to:

receive the query;

respond to the field name and the indication of the manner for selecting a row as required to obtain the information to be provided from the information source; and

provide the information as a value of the field indicated by the field name in the selected row, in response to the query; and

an additional information source configured for use as a user profile information source that provides additional information about the user through the use of profile information gathering that indicates to the user profile information source how to gather the profile information, the indication of the manner for selecting a row further including the profile information gathering information, wherein the information provided in response to the query is obtained at least in part from the profile information source, the provided information including the profile information.

2. The apparatus of claim 1, wherein the indication of the manner of selecting a row further includes a selection value and the information source provides at least one component of the information to be provided in response to a match between the selection value and a pattern that matches a plurality of values and is accessible to the information source.

3. The apparatus of claim 1, wherein:

the query is an SQL query addressing the virtual database table;

the field name is contained in a SELECT clause in the query; and

the indication of the manner of selecting a row is contained in a WHERE clause in the query.

5. The apparatus of claim 1, wherein the access evaluator determines whether the user may have access to the information resource by considering one or more access policies, each access policy indicating whether a user group may have access to a set of information resources, the access evaluator configured to allow access by the user to the information resource when the one or more access policies for the user groups to which the user belongs permit access to the sets of information resources to which the information resource belongs and the manner of selecting a row comprises membership information about the user from which membership of the user in a user group may be determined.

6. The apparatus of claim 5, wherein the access evaluator uses the membership information to determine membership of the user in a user group.

7. The apparatus of claim 6, wherein:

the access evaluator determines that the membership of the user in the user group permits the user access to the information resource; and

the information provided in response to the query further indicates a method of providing further information about the user in a further query from which the membership of the user in a user group can be determined.

8. The apparatus of claim 7, wherein the further information includes authentication information that may be used to validate the identity of the user.

9. The apparatus of claim 8, further comprising an additional information source configured for use as an authenticator, wherein the authentication information is used to validate the identity of the user.

10. The apparatus of claim 9, wherein a response to the further query provides an indication whether the identity of the user is valid with regard to accessing an information resource.

EVIDENCE APPENDIX
37 C.F.R. § 41.37(c)(1)(ix)

A copy of the June 25, 2007 decision rendered by the Board of Patent Appeals and Interferences in the matter of *Ex Parte Mary Smith*, Appeal 2007-1925, Application 09/391,869 is included herewith. The Board's decision in *Ex Parte Mary Smith* was referenced by the Examiner in the action dated September 15, 2008. The Appellants challenge the Examiner's interpretation of that decision.

RELATED PROCEEDINGS APPENDIX

37 C.F.R. § 41.37(c)(1)(x)

No related proceedings including appeals or interferences—either concluded, ongoing, or otherwise prospective—are known to the Appellants, real-party-in-interest, nor their agents and representatives. As such, no decisions or documentation related to such a proceedings is presented or referenced herewith.